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Rebecca Katsura
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July 31, 2019

VIA E-MAIL

Samuel Sinyangwe
Muckrock
Email: 72831-16336690@requests.muckrock.com

Re: Public Records Act Request [GovQA No. R003701-072219 and R003772-073119]

Dear Mr. Sinyangwe:

The City of Santa Monica (the “City”) received your Public Records Act (the “Act”), requests, dated May 6, 2019 and July 17, 2019. It is not clear to Santa Monica Police Department (“SMPD”) staff when we first received your original request dated May 6, 2019. Our efforts to locate and confirm the date that we received your request, dated May 6th, have been unsuccessful. This letter responds to both of your requests, which appear to seek similar data.

You requested the following records, verbatim, with the exception of the numbers that we assigned to each of your requests for ease of reference:

Request dated May 6, 2019, resubmitted via email on July 8, 2019:

1. The total number of police use of force incidents, broken down by type of force used, between 2013-2018 (separated by year).
2. The total number of people that police used force against, between 2013-2018 (separated by year).
3. The total number of officer-involved shootings between 2013-2018 (separated by year).
4. The total number of police use of force complaints reported between 2013-2018 (separated by year).
5. The total number of police use of force complaints sustained between 2013-2018 (separated by year).

Request dated July 17, 2019, submitted via email on July 17, 2019:

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6. The total number of police uses of force in 2018, broken down by type of force used (i.e. number of uses of tasers, number of uses of baton, etc.)
7. The total number of use of force complaints reported by civilians in 2018
8. The total number of use of force complaints reported by civilians that were sustained in 2018
9. All arrests data reported to the California Department of Justice via the Monthly Arrests and Citation Register program covering arrests made in 2017 and 2018, including (but not limited to) the age, race/ethnicity, gender, offense category (felony, misdemeanor, status offense), charge and disposition of arrestees.

Enclosed is the City's production of non-exempt records in response to your two recent requests for SMPD records.

The City's obligation under the Act is to produce records upon receiving a request that "reasonably describes an identifiable record." (Gov. Code, § 6253, subd. (b).) Even a clearly framed request can be objectionable as unduly burdensome if it requires an agency to search an enormous volume of data for a "needle in a haystack" or compels the production of a huge volume of material. (*American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440 ("ACLU"); *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166 ("First Amendment Coalition").)

"[A] person who seeks public records must present a reasonably focused and specific request, so that the public agency will have an opportunity to promptly identify and locate such records and to determine whether any exemption to disclosure applies." (*Galbiso v. Orosi Public Utility Dist.* (2008) 167 Cal.App.4th 1063, 1088.) Under the Act, a governmental agency is only obliged to disclose records that can be located with reasonable efforts and cannot be compelled to a "limitless" disclosure obligation. (*First Amendment Coalition* at p. 166; *ACLU* at p. 453.) "The request to the agency must itself be focused and specific." (*Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 481.) A test for the reasonable description of identifiable records requirement is "whether the records can be located with reasonable efforts." (*State Board of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1186.)

The City has carefully reviewed your requests and has determined that your requests are unduly burdensome. The scope of your requests are extremely broad and requests Nos. 1-5 and 9 are not limited to a reasonable time period. Your requests would entail SMPD staff to review a voluminous amount of records, carefully review and compile data, and create new records that do not currently exist.

Under the circumstances here, the public interest in nondisclosure justifies withholding public records that the City cannot locate with reasonable efforts. It is not in the public interest for the City to expend City resources and disrupt efficient government operations to search an enormous volume of data, especially in cases where the requests can be focused to permit the

City to locate records with reasonable efforts. Disclosure of responsive public records may be blocked as unduly burdensome if “on the facts of the particular case the public interest served by not making the records public clearly outweighs the public interest served by disclosure of the record.” (ACLU at p. 452.) When weighing the benefits and costs of disclosure, any expense or inconvenience to the public agency may be considered. (*Id.*)

We request that you focus your requests to permit the City to promptly identify and locate responsive records with reasonable efforts. For example, you can omit overly broad terms such as “all arrests data” or “including (but not limited to)” to focus your requests. You can also focus the time period of interest.

Additionally, the Act does not require that the City answer questions, perform research, or create new records or custom reports in a format that the City does not use or possess. In order to identify the requested data, SMPD would need to review a voluminous amount of records generated over a period of five years, compile data, and create a new record that is responsive each of your specific requests. A public records request applies only to records existing at the time of the request; it does not require a local agency to produce records that may be created in the future.

Notwithstanding our request that you focus your requests, in an effort provide you with responsive records, enclosed are the records that currently exist and that we located with reasonable efforts. Our responses to your various requests are as follows:

Response to No. 1: The enclosed SMPD data was collected for the period of 2012-2015 and is partially responsive to your request. This PDF contains SMPD data relating to use of force incidents and types of force used. SMPD has no other existing records that document “use of force incidents, broken down by type of force used, between 2013-2018 (separated by year).”

Response to No. 2: We have completed our search for records. The City does not have records that identify a total number of people that police used force against, between 2013-2018 (separated by year).

Response to No. 3: We have completed our search for records. The City does not have records that identify the total number of officer-involved shootings between 2013-2018 (separated by year).

Response to Nos. 4-5: The SMPD’s website (<https://santamonicapd.org/>) contains posted Internal Affairs reports regarding SMPD personnel complaints. These reports identify the number of complaints related to use of force. These reports also contain detailed information regarding each personnel complaint, including which complaints were about use of force, and whether an allegation was sustained.

- 2013 Report (reporting date January 11, 2016):
https://santamonicapd.org/uploadedFiles/Police/About_Us/Annual_Reports/InternalAffairs%20Annual%20Report%20-%202013.pdf
- 2014 Report (reporting date January 11, 2016):
https://santamonicapd.org/uploadedFiles/Police/About_Us/Annual_Reports/InternalAffairs%20Annual%20Report%20-%202014.pdf
- 2015 Report (reporting date December 8, 2017):
https://santamonicapd.org/uploadedFiles/Police/About_Us/Annual_Reports/InternalAffairs%20Annual%20Report%20-%202015.pdf

We have no other existing records that document the requested data.

Response to Nos. 6-8: We have completed our search for records. We have no existing records that document the requested data for 2018.

Response to No. 9: The information you requested includes local criminal history information, including identifying information of persons that were arrested in 2017 and 2018, such as first names, last names, dates of birth, and District Reporting numbers that can be used to identify the subjects of the arrest records. We will not disclose local summary criminal history information and other exempt information that you requested for the reasons outlined below. The Act does not require SMPD to produce the requested information in a format that it does not use.

A local summary criminal history record means “the master record of information compiled by any local agency pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.” (Pen. Code § 13300(a)(1).) Disclosure of records from a criminal history database that can be used to identify the holder of the record will normally violate state or federal law, and therefore are exempt from disclosure under the Act pursuant to Gov. Code § 6254(k).

Requests for information pursuant to Government Code § 6254 subdivision (f)(1) are limited to contemporaneous cases. (*County of Los Angeles v. Superior Court (Kusar)* (1993) 18 Cal.App.4th 588, 598-601.) SMPD’s policy is to consider cases “contemporaneous” for up to 60 days following the date of an individual’s arrest. Otherwise, a requester would effectively bypass criminal history restrictions set forth under Penal Code sections 11105 et seq and 13300 et seq. The Penal Code makes it a misdemeanor to improperly provide local criminal history information that could be used to identify the holder of the record. (Pen. Code, §§ 11141, 11142, 13302, 13303; see also *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 164-166 and *Craig v. Municipal Court* (1979) 100 Cal.App.3d 69, 76-77 [also discussing the obligation of a public agency to enforce these concerns].)

To the extent that that you seek identifying information about arrestees that does not involve contemporaneous cases, we will only produce records containing such information if you

meet an exception within the Criminal Offender Information Statutes. (Penal Pen. Code, §§ 13100 et seq.) Your request does not meet the requirements of Penal Code § 13202, which permits access to criminal offender record information only under certain limited circumstances. Penal Code § 13202 states:

“[E]very public agency or bona fide research body immediately concerned with the prevention or control of crime, the quality of criminal justice, or the custody or correction of offenders **may** be provided with such criminal offender record information as is required in the performance of its duties, provided that any information identifying individuals is not transferred, revealed, or used for other than research or statistical activities and **reports or publications derived therefrom do not identify specific individuals . . .**”

(Gov. Code, § 13202, emphasis added.)

If you meet the requirements of Section 13202, please submit a written declaration on official stationery, under penalty of perjury, to evidence that you qualify to receive criminal offender record information pursuant to this exception. Your declaration should pledge that you are concerned with “prevention or control of crime, the quality of criminal justice, or the custody or correction of offenders” and explain why identifying information is necessary to the research being conducted. Additionally, your declaration should state that you agree that any reports or publications that are created from the data provided cannot be used in certain specific ways and cannot contain information that could be used to identify specific individuals, such as listing of names or case numbers. We also request that the declaration include the following:

- Reasonable proof of your identity (e.g copy of your identification card or Driver’s License No.) and your employment and/or affiliation with the University of California, Los Angeles; and
- A reaffirmation of your commitment that information that SMPD provides to you will not be used directly or indirectly, or furnished to another, to sell a product or service to any individual or group.

Please ensure that you date and sign your declaration.

While SMPD **may** disclose criminal offender record information under Penal Code § 13202, SMPD is not required to do so under this statute. SMPD has discretion to limit its disclosure to identifying information that has already been made public and/or that is reasonably relevant and necessary to the research being conducted.

Moreover, to the extent that disclosure of information pursuant to Government Code §§ 6254 (f)(1) and (f)(3) would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or related investigation, SMPD intends to withhold such information. (Gov. Code, § 6254 subd. (f)(1).) Additionally, SMPD

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reserves the right to assert additional applicable exemptions or privileges that are authorized under the Act.

Because you seek offender record information that does not involve contemporaneous arrests, the City will only agree to produce records submitted to the California Department of Justice if you agree to focus your request by excluding arrestee identifying information (e.g. names, dates of birth, and District Reporting Numbers). We can produce records if you focus your request, we determine that the City's production of the records for a period of two years will not be unduly burdensome, and you submit to SMPD the amount of \$147.76, the cost of creating the report with the requested data. If you would like SMPD to produce this record, please remit payment payable to the Santa Monica Police Department to the address below and the records will be produced to you.

Santa Monica Police Department
Records Unit
Attn: Virginia Connolly
333 Olympic Drive
Santa Monica CA 90401

Given the broad scope of your requests, we are providing the records that we could locate with reasonable efforts. Should you seek additional records, we ask that focus your requests, including the time range for your requests. We ask that you focus your requests to permit the City to promptly identify and locate responsive records with reasonable efforts.

If we do not receive a response to our request that you focus your requests or provide the necessary information/records to evidence that you qualify to receive criminal offender record information and pay the report fee, within 10 days from the date of this letter, we will assume that you have withdrawn Request No. 9.

Thank you for your cooperation.

Sincerely,



Rebecca Katsura
Public Records Coordinator